IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 309 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M B SAIYED

Versus

DIST DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 309 of 1989

MR NK MAJMUDAR for Petitioner No. 1

M/S MG DOSHIT & CO for Respondent No. 1

MRS KETTY A MEHTA for Respondent No. 2-6

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 09/05/2002

ORAL JUDGEMENT

1. The petitioner has approached this Court under Article 226 of the Constitution of India by way of this

petition praying for grant of relief to the effect that respondent no. 1 be directed to give deemed date of promotion to the petitioner from the year 1973 to the post of Vaccination Supervisor. He has also prayed for direction to quash and set aside the orders of promotion granted in favour of respondents nos. 3 to 6 on the post of Vaccination Supervisor/School Health Assistant. He has further prayed that the decision of respondent no. 1 not to consider the petitioner's case for promotion to the post of Vaccination Supervisor/School Health Assistant alongwith respondent nos. 3 to 6 be quashed. By way of interim relief, he has sought for direction of this Court on respondent no. 1 to consider his case for promotion to the post of Vaccination Supervisor/School Health Assistant as and when occasion to fill up the said post arose during the pendency of this petition.

2. According to the petitioner, he was appointed initially in the service of State Government on the post of Vaccinator in the year 1963 and was posted in the scheme called National Small-pox Eradication Programme. He was thereafter allocated to the Panchayat service vide order dated 30th May, 1966 and was posted at the disposal of District Panchayat, Mehsana. In the year 1968 he was deputed in the service of Valsad District Panchayat on the post of Vaccinator. By order dated 15th April, 1985 issued by the Development Commissioner, the petitioner came to be treated as permanently transferred to Valsad District Panchayat in public interest and for administrative reasons. He has further averred that with Valsad District Panchayat initially his name was placed at serial no. 65 in the seniority list, but upon his raising objections, he was placed at No. 1 in the seniority list published by respondent no. 1 dated 18th October, 1986. According to him, even in the final seniority list showing the position as on 1st January, 1987 and published on 2nd November, 1988, his name was shown at serial no. 1. His grievance is that despite being senior most Vaccinator in Valsad District Panchayat he was not being considered for the promotional post of Vaccination Supervisor even when the promotion was to be granted on the basis of seniority cum merit. His grievance further is that for promotion to the said post the eligibility criterian was to pass Sanatory Inspector's examination, but he was never permitted to appear in the said examination. Apart from this, his case is that in view of the amended rules of the Panchayat, even otherwise he was eligible for promotion for the post of Sanatory Inspector/Vaccination Supervisor. It is his case that respondent no. 2 was promoted in the year 1973 and his case was also required

to be considered for promotion alongwith respondent no.2. However, since that has not happened, this Court may issue appropriate direction on the respondent no. 1 to give him deemed date of promotion from the date on which respondent no. 2 came to be promoted. He has further agitated before this Court that respondents nos. 3 to 6 have been very cleverly posted on the post of School Health Assistant with a view to bypass petitioner. Thus, in nutshell his contention is that the action of respondent no. 1 of not granting him promotion with effect from 1973 is violative of Articles 14 and 16 of the Constitution of India being arbitrary, high-handed and discriminatory.

2.1. The petition has been resisted by respondent no.1 and 2 to 6 by filing their respective affidavits-in-reply. Sum and substance of the say of the respondents is that though petitioner was shown at serial no. 1 in the seniority list meant for Vaccinator, he could not be considered for promotional post as he was not fulfilling eligibility criteria in as much as he had not passed the Sanatory Inspector's examination. According to the respondents, there was no question of Panchayat not permitting him to appear in the said examination because the said examination was not being held by the Panchayat, but it was being held by the All India Institute of Local Self Government and for that classes were being held at Ahmedabad and Baroda and a candidate desiring to appear in this examination after undergoing the training period was required to obtain leave of the Panchayat, which was normally granted to every one to undergo this course and clear the examination. However, the petitioner did not make any such attempt and hence he did not qualify for being appointed on the promotional post. Respondents, therefore, prayed that the petitioner had no reason or justification to make any grievance and the petition deserves to be dismissed.

3. Today when the matter was called out for hearing, Mr. N.K. Majmudar, learned advocate appearing for the petitioner made a statement at bar that the petitioner was subsequently promoted on 21st August 1998 and he retired from service on reaching age of superannuation on 31st December, 2000. These facts are also reflected in the affidavit-in-reply filed by the respondent no.1. He, therefore, submitted that there is no point in prosecuting this petition as the grievances made by the petitioner do not survive in view of these later developments. He, however, submitted that so far the deemed date of promotion is concerned, the petitioner may

be allowed to make appropriate representation before the Department. Mr. M.G. Doshit and Mrs. K.A. Mehta, learned counsels appearing for respondents nos. 1 and 2 to 6 respectively, have no objection if the petitioner is allowed to make such representation. In view of the aforesaid statements made by the counsels for the parties, this petition deserves to be disposed of as having become infructuous. The petition is, therefore, disposed of with liberty to the petitioner to make appropriate representation with regard to his grievance relating to granting the deemed date of promotion to the Department and as and when such representation is received by the Department, it should decide it strictly on its merits and in accordance with law. The petition, therefore, stands disposed of. Rule discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.